

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 EB-07 L-03 /021 W

-----140644Z 126765 /16

R 131913Z MAY 77

FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC 0482

INFO USDOC

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E.O. 11652: N/A

TAGS: EFIN, PGOV, AR

SUBJECT: GOA NEW INSURANCE REGULATIONS

REF: (A) STATE 102482; (B) BUENOS AIRES 3220

SUMMARY: AIU GROUP MET WITH EMBOFF AND ALSO WITH SECRETARY OF FINANCE JUAN ALEMAN TO DISCUSS IMPACT OF NEW INSURANCE LEGISLATION ON U.S. INSURANCE COMPANIES WITH INTERESTS IN ARGENTINA. AIU BELIEVES IT WILL BE ADVERSELY AFFECTED BY NEW DEFINITION OF WHAT CONSTITUTES A NATIONAL COMPANY -- A DEFINITION WHICH IS MORE LIBERAL THAN THAT UNDER PERONIST LAW CURRENTLY IN EFFECT BUT NO APPLIED, THE AFIA GROUP IS CONCERNED WITH EFFECT OF NEW REINSURANCE REGULATIONS. SECRETARY ALEMAN REJECTED AIU'S REQUEST FOR A GRANDFATHER CLAUSE, BASED ON HIS ASSESSMENT THAT NEW REGULATIONS ARE OVERALL MORE LIBERAL THAN OLD. HE REPORTEDLY ADMITTED THAT THE REGULATIONS, BOTH OLD AND NEW, CONTRAVENED THE SPIRIT OF THE FOREIGN INVESTMENT LAW BUT SAID NOTHING COULD BE DONE ABOUT IT NOW THAT REGULATIONS HAVE BEEN APPROVED BY THE LEGISLATIVE ADVISORY COUNCIL AND ARE AWAITING SIGNATURE BY THE PRESIDENT. IN VIEW OF NEW INFORMATION WHICH HAS COME TO LIGHT, EMBASSY REQUESTS DEPARTMENT'S INSTRUCTIONS AS TO WHETHER OFFICIAL DEMARCHE ON BEHALF OF AIR AND AFIA SHOULD BE MADE AND WHAT FORM IT SHOULD

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TAKE.

END SUMMARY

1. EMBOFF MET WITH AIU GROUP ON MAY 9 AND DISCUSSED PENDING GOA INSURANCE REGULATIONS. ON THE BASIS OF THESE DISCUSSIONS THE EMBASSY LEARNED THAT AIU'S MAIN INTEREST IN ARGENTINA IS THROUGH ITS MAJORITY OWNERSHIP OF A

COMPANY NAMED MERIDIONAL. DESPITE THE FACT THAT AIU HAS A MAJORITY OWNERSHIP IN MERIDIONAL, IT HAS BEEN OPERATING AS A NATIONAL COMPANY; UNDER THE NEW PROPOSED LAW, AIU WOULD HAVE TO OPERATE AS A FOREIGN COMPANY.

2. AS EXPLAINED BY SHELP, THERE IS A SIGNIFICANT ADVANTAGE IN BEING CLASSIFIED A NATIONAL COMPANY UNDER ARGENTINE LAW. APPARENTLY, NOT ONLY IS ALL GOVERNMENT BUSINESS RESERVED FOR NATIONAL INSURANCE COMPANIES, BUT ANY PRIVATE COMPANY RECEIVING ANY KIND OF GOVERNMENT CONCESSION, INCENTIVE, OR TAX BENEFIT ALSO MUST BUY ITS INSURANCE FROM A NATIONAL COMPANY. IN ADDITION, WITH THE EXCEPTION OF AID-FINANCED CARGOES, ALL LOCALLY PLACED MARINE INSURANCE IS RESERVED FOR NATIONAL INSURANCE COMPANIES. SHELP ESTIMATED THAT APPROXIMATELY HALF OF MERIDIONAL'S BUSINESS WOULD BE LOST IF IT HAD TO OPERATE AS A FOREIGN COMPANY.

3. THE AIU GROUP EXPRESSED LITTLE CONCERN REGARDING THE REINSURANCE PROVISIONS OF THE PROPOSED NEW REGULATIONS. UNDER THE CURRENT LAW, FOREIGN INSURANCE COMPANIES BASED IN ARGENTINA MUST PLACE 60 PERCENT OF THEIR REINSURANCE WITH INDER, THE STATE-OWNED REINSURANCE COMPANY, AND MAY PLACE THE REMAINING 40 PERCENT DIRECTLY ABROAD. UNDER THE NEW REGULATIONS, ALL REINSURANCE WOULD HAVE TO BE PLACED LOCALLY WITH EITHER INDER OR WITH PRIVATE NATIONAL REINSURANCE COMPANIES, IN WHICH UP TO 30 PERCENT OF THE STOCK MAY BE HELD BY FOREIGNERS. AS FAR AS WE CAN DETERMINE, LIMITED OFFICIAL USE

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THE CHANGE IN THE REINSURANCE PROVISIONS WOULD ONLY AFFECT THE AFIA GROUP, WHICH IS REPRESENTED IN ARGENTINA BY HOME INSURANCE. SHELP SAID THAT HE DID NOT BELIEVE THE AFIA IS TOO CONCERNED ABOUT THE PROPOSED CHANGES IN THE NEW REGULATIONS. (AN ASSERTION WHICH WAS SUBSEQUENTLY CONTRADICTED BY LOCAL AFIA REP).

4. THE AIU GROUP MET WITH THE SECRETARY OF FINANCE ALEMAN ON MAY 9 TO DISCUSS ADVERSE IMPACT OF PROPOSED REGULATIONS ON U.S. AND OTHER FOREIGN COMPANIES. ACCORDING TO SHELP, ALEMAN REJECTED THE AIU CLAIM THAT THE NEW LEGISLATION WOULD PROVIDE A MORE RESTRICTIVE DEFINITION OF WHAT CONSTITUTES A NATIONAL COMPANY. ALEMAN POINTED OUT THAT UNDER THE EXISTING PERONIST LAW, A NATIONAL COMPANY IS ONE IN WHICH AT LEAST 80 PERCENT IS OWNED BY ARGENTINE NATIONALS; UNDER THE NEW LAW, A NATIONAL COMPANY IS ONE IN WHICH AT LEAST 70 PERCENT IS OWNED BY ARGENTINE NATIONALS - A CHANGE WHICH WOULD MAKE IT EASIER FOR MINORITY FOREIGN SHARE-

HOLDERS TO GAIN THE ADVANTAGES MADE AVAILABLE TO NATIONAL COMPANIES. ALEMAN CONCEDED THAT THE DEFINITION WAS STILL STRICTER THAN THAT IN THE FOREIGN INVESTMENT LAW BUT SAID THAT IT FOLLOWED THE PRECEDENT SET BY THE NEW BANKING LAW. IN SUM, EVEN THOUGH THE PERONIST LAW WAS NOT ENFORCED AS IS CLEAR FROM THE FACT THAT MERIDIONAL HAS BEEN OPERATING AS A NATIONAL COMPANY, ALEMAN REJECTED THE CLAIM BY AIU THAT A GRANDFATHER CLAUSE COULD BE USED IN THIS CASE.

5. ALEMAN REPORTEDLY AGREED WITH THE AIU ARGUMENT THAT THE PROPOSED NEW INSURANCE REGULATIONS APPEAR TO CONTRAVENE THE SPIRIT OF THE NEW FOREIGN INVESTMENT LAW, WHICH STIPULATES THAT FOREIGN INVESTORS SHALL HAVE THE SAME RIGHTS AND OBLIGATIONS THAT THE CONSTITUTION AND LAWS GRANTED TO NATIONAL INVESTORS. NONETHELESS, HE SAID THAT THERE WAS NOT MUCH THAT COULD BE DONE ABOUT IT INASMUCH LIMITED OFFICIAL USE

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AS THE DRAFT LAW HAS BEEN APPROVED BY THE LEGISLATIVE ADVISORY COUNCIL (CAL) AND IS NOW AT THE PRESIDENCY AWAITING THE PRESIDENT'S SIGNATURE.

6 ACCORDING TO SHELPS, THE ONLY ARGUMENT THAT SEEMED TO HAVE ANY IMPACT ON SECRETARY ALEMAN WAS THE POSSIBILITY THAT THE U.S. MIGHT RETALIATE UNDER SECTION 301 OF

THE TRADE ACT OF 1974. ALEMAN TOLD SHELP THAT EVERY EFFORT HAD BEEN MADE TO ENSURE THAT THE REGULATIONS WOULD NOT CREATE PROBLEMS WITH OTHER COUNTRIES, AND PARTICULARLY WITH THE U.S.

7. THE AIU GROUP ALSO MET WITH THE SUBSECRETARY FOR FOREIGN INVESTMENT, FEDERICO DUMAS ON MAY 11, WHO WAS SYMPATHETIC BUT INDICATED MATTER WAS OUTSIDE HIS COMPETENCE. HE ALSO EXPRESSED INTEREST IN THE TRADE ACT.

8. COMMENT: IN EMBASSY'S OPINION, AIR'S CASE HAS BEEN WEAKENED BY ACKNOWLEDGEMENT THAT IT OWNS A PERCENTAGE OF MERIDIONAL WHICH WOULD CLASSIFY IT AS A FOREIGN-OWNED COMPANY EVEN UNDER THE FOREIGN INVESTMENT LAW AND THAT IT IS OPERATING AS A NATIONAL COMPANY, EVEN THOUGH IT IS NOT ENTITLED TO, UNDER THE STILL CURRENT PERONIST INSURANCE LAW. LEGALLY SPEAKING, GOA HAS A GOOD ARGUMENT THAT THE LIMITED OFFICIAL USE

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NEW REGULATIONS ARE LESS RESTRICTIVE THAN THE FORMER ONES, PARTICULARLY PROVISIONS DEFINING NATIONALITY OF COMPANIES.

9. WITH RESPECT TO THE REINSURANCE PROVISIONS, NEW REGULATIONS ESSENTIALLY PUT FOREIGN INSURANCE COMPANIES OPERATING IN ARGENTINA ON THE SAME FOOTING AS NATIONAL INSURANCE COMPANIES -- I.E. LOST PRIVILEGE NOT AVAILABLE TO NATIONAL INSURANCE COMPANIES OF REINSURING UP TO 40 PERCENT OF CONTRACTS ABROAD. THEY ARE DISCRIMINATORY, HOWEVER, IN THE SENSE THAT ONLY NATIONAL COMPANIES MAY BECOME REINSURANCE COMPANIES -- A RESTRICTION WHICH EFFECTIVELY KEEPS FOREIGN PARTICIPATION IN ANY SINGLE REINSURANCE COMPANY UNDER 30 PERCENT. SINCE MANY COUNTRIES, INCLUDING THE US, HAVE LAWS PREVENTING FOREIGN OWNERSHIP OF COMPANIES IN CERTAIN KINDS OF ACTIVITIES, THE QUESTION IS WHETHER THE RESTRICTIONS ON FOREIGN OWNERSHIP OF REINSURANCE COMPANIES ARE A SOUND BASIS FOR COMPLAINT. IN ARGENTINA, THERE ARE ALREADY SUCH RESTRICTIONS IN THE BANKING SECTOR, WHERE FOREIGN COMPANIES ARE ONLY PERMITTED TO OPERATE AS COMMERCIAL AND INVESTMENT BANKS.

10. WE ALSO QUESTION THE WEIGHT OF THE ARGUMENT THAT THE INSURANCE REGULATIONS ARE INCONSISTENT WITH THE SPIRIT OF NEW FOREIGN INVESTMENT LAW -- AN ARGUMENT CONCEDED BUT AT THE SAME TIME DISMISSED BY SECRETARY ALEMAN. WE NOTE THAT ARTICLE 1 OF THE FOREIGN INVESTMENT LAW QUALIFIES THE EQUALITY OF RIGHTS AND OBLIGATIONS GIVEN TO FOREIGN AND NATIONAL INVESTORS WITH THE PHRASE "SUBJECT...TO THE RULES THAT SPECIAL OR PROMOTIONAL STATUTES PROVIDE" --

A PHRASE WHICH COULD CONCEIVABLY BE USED TO INCLUDE INSURANCE REGULATIONS. ALSO, SINCE DISCRIMINATION AGAINST FOREIGN COMPANIES EXISTED UNDER THE PREVIOUS INSURANCE LAW, THE GOA MAY POINT OUT THAT NO ACTION UNDER SECTION 301 OF THE 1974 TRADE ACT WAS TAKEN AGAINST THE PERONIST REGIME AND THAT RETALIATION AGAINST LIMITED OFFICIAL USE

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THE MORE LIBERAL LEGISLATION IMPLEMENTED BY THE GOA WOULD NOT BE UNFAIR.

11. BEFORE MAKING ANY DEMARCHE, THE EMBASSY PLANS TO CONSULT FURTHER WITH AFIA GROUP, THE ASSOCIATION OF FOREIGN INSURERS IN ARGENTINA, AND THE BRITISH EMBASSY WHICH HAS REPORTEDLY ALSO RECEIVED INSTRUCTIONS TO MAKE DEMARCHE REGARDING THE NEW INSURANCE REGULATIONS. IN THE MEANTIME, HOWEVER, EMBASSY WOULD APPRECIATE INSTRUCTIONS FROM DEPARTMENT REGARDING DESIRABILITY OF MAKING APPROACH, GIVEN THE NEW INFORMATION WHICH HAS COME TO LIGHT. IN ADDITION, WE WOULD APPRECIATE ASSESSMENT AS TO WHETHER SECTION 301 OF THE 1974 TRADE ACT COULD BE INVOKED IN THIS CASE.

12. PER REQUEST REF A, EMBASSY HAS POUCHED TWO ADDITIONAL SETS OF PROPOSED NEW INSURANCE REGULATIONS. CHAPLIN

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## Message Attributes

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